IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.2.2007

Coram

The Honourable Mr.Justice P.D.DINAKARAN
and
The Honourable Mrs.Justice CHITRA VENKATARAMAN

T.C.Nos. 184 to 188 of 2003
and
T.C.Nos.791 to 796 of 2005

V.R.Govindrajulu ...Appellant in all TCs

-vs-

Asst. Commissioner of Wealth Tax
Special Investigation Circle III
Coimbatore. ...Respondent in T.C.No.184 of 2003

Asst. Commissioner of Wealth Tax
Special Investigation Circle II
Coimbatore. ...Respondent in T.C.No.185 to 188 of 2003
T.C.No.791 to 796 of 2005

Tax Case (Appeal) Nos. 184 to 188 of 2003 are filed under section 260A of the Income Tax Act against the order of the Income Tax Appellate Tribunal, Chennai Bench C, dated 20.1.2003 in WTA.Nos.191, 899, 192 of 1992, 708 of 93 and 1019 of 92 for the Assessment year 1986-87, 1989-90, 1987-88, 1990-91 and 1988-89 respectively and against the order of Commissioner of Wealth Tax (Appeals) Coimbatore, dt.10.12.91 in WT Appeal No.153-C & 154-C/91-92; dt. 25.5.92 in WTA No.92-C/92-93; dt.10.12.91, in WTA No.153-C & 154-C/91-92; dt.12.3.93 in WTA 338-C/9293 dt. 9.7.92 in WTA:50-C/92-93 and arising out of the Assessment order of Assistant Commissioner of Wealth-Tax/Income Tax Special investigation Circle-III, Coimbatore, dt.27.3.91, 31.3.91 and 31.3.92 in Nos.PY-0026/SIC-III/CBE,PY-0026/89-90/SIC-III,PA No.49-516-PY-0026/SIC-III/CBE, and GI No.PY-0026/88-89/SIC-III.

Tax Case (Appeal) Nos. 791 to 796 of 2005 are against the order of the Income Tax Appellate Tribunal, Chennai Bench C, dated 20.1.2003 in ITA.Nos.620/90, 611, 612 and 613/93, 391/94 and 1305/94

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for the Assessment year 1986-87, 1987-88, 1988-89, 1990-91, 1991-92 and 1992-93 respectively and against the order of Commissioner of Income Tax-(A) Coimbatore; Deputy Commissioner (Appeals) i/c-Coimbatore dt. 17.11.1989,18.11.92,7.1.1992, 8.12.93 and 11.3.94 in ITA No.224-C/89-90, 146/91-92 & 147/91-92, ITA No.690-C/92-93, 744-C-93-94 and 969-C/93-94 and arising out of the Assessment order of Assistant Commissioner of Income-Tax, Special Investigation circle -II/III,Coimbatore, dt.27.3.1989,27.3.1991, 16.1.1992, 29.10.1993, and 23.12.1993 in PA No-PY-0026/SIC-II,III-CBE, and 49-510-PY-0026/SIC-III/Cbe/91-92 and PAN/GIR No.49-510-PV-0026/SIC-III/cbe.

For Appellant : Mr.P.J.Rishikesh

For Respondents: Mr.T.Ravikumar

JUDGMENT

(The judgment of the Court was delivered by
CHITRA VENKATARAMAN,J)

These are the appeals relating to the same assessee's case. T.C.No.184 of 2003 relates to the assessment year 1986-87. T.C.No. 185 of 2003 relates to the assessment year 1989-90. T.C.No.186 of 2003 relates to the assessment year 1987-88. T.C.No.187 of 2003 relates to the assessment year 1990-91 and T.C.No.188 of 2003 relates to the assessment year 1988-89. T.C.No. 791 of 2005 relates to the assessment year 1986-87. T.C.No.792 of 2005 relates to the assessment year 1987-88. T.C.No.793 of 2005 relates to the assessment year 1988-89. T.C.No.794 of 2005 relates to the assessment year 1990-91. T.C.No.795 of 2005 relates to the assessment year 1991-92. T.C.No.796 of 2005 relates to the assessment year 1992-93.

2. The questions of law raised in all the appeals are common and are as follows:-

(i) Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that the status of the assessee was an individual?
(ii) Whether on the facts and in the circumstances of the case, the property was to be assessed in the hands of the individual and not of the HUF of which the assessee was the kartha as claimed by the assessee?

3. T.C.Nos.184 to 188 of 2003 relate to Wealth Tax Act and T.C.Nos.791 to 796 of 2005 relate to Income Tax Act.

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4. The assessee is an individual. It is seen that there was a family partition on 10.6.1960 among the assessee's father, P.K.Ramaswamy Konar, his two wives and his sons through them. Properties in one schedule was allotted to Mayakkal and her sons and another schedule to Ramakkal and her sons. There was yet another partition on 30.6.1966 among the assessee, his brothers and his mother. He was allotted house properties apart from certain agricultural lands. An extent of 3.36 acres of agricultural lands allotted to him on the partition was stated to be his mother's separate property. It is also stated that there was further partition among the assessee, his wife and his minor son as evidenced by partition deed dated 28.3.1983. This was given effect to retrospectively from 18.1.1978, on which date it was claimed that there was an oral agreement for partition. The assessee claimed that the agricultural properties of an extent of 3.36 acres received by him under this partition deed of the year 1966 and 1983 belonged to the HUF consisting of himself and his wife and hence assessable as HUF property. He submitted that the allotted properties belonging to his mother was purchased from out of the joint family funds in her name and hence, was a family property. The Assessing Authority held that the properties obtained in the partition deed dated 28.3.1983 was a separate property and hence assessable under the status of individual. The assessee questioned this assessment in the appeal filed before the Commissioner of Income Tax. Apart from this, there were other issues raised in the appeal.

5. The first Appellate Authority viz., the Commissioner of Income Tax (Appeals) noted that there was a family partition as early as 1966 among the assessee, his three brothers and his mother. The assessee was allotted a house property at Thadagam Road, Coimbatore, to an extent of 5 cent site and 3.36 acres of dry agricultural land. Prior to the partition, the agricultural land was in the name of the assessee's mother. Consequently, the Assessing Authority took a view that the property could not have become a property of HUF for a female member to blend the same with joint family property. Subsequently, there was yet another partition deed dated 26.3.1983, which was given effect to from 18.1.1978 retrospectively. In the said partition deed, properties at Thadagam Road, Coimbatore was allotted to the assessee's wife. The Commissioner of Income Tax (Appeals) noted that even prior to 1966 partition, there was a total partition in 1960 in which the assessee's father, on his partition, had given the properties to the children of his two wives viz., A schedule properties were allotted to sons through one wife and B schedule properties to sons of another wife. Going by the 1983 document, the Commissioner held that the dry lands obtained through the mother was retained by the assessee himself; that he shared the other properties alone between himself, minor son and his wife. The Commissioner of Income Tax

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(Appeals) also noted that the assessee was governed by mitakshara law. The Commissioner also noted that there was no evidence that the agricultural lands which stood in the name of the assessee's mother, were purchased from and out of the joint family property. The Commissioner of Income Tax (Appeals) further noted that the HUF never filed any return treating this property as a HUF property. In these circumstances, one cannot presume by mere reference in the partition deed that the agricultural lands belonged to the joint family property. Hence, the first Appellate Authority agreed with the Assessing Authority's view that income from the agricultural lands be only treated as an individual income of the assessee. Hence, the properties be treated as the properties of the individual. Thus the Commissioner of Income Tax rejected the appeals of the assessee. The view taken by the Commissioner of Income Tax (Appeals) is common in respect of income tax assessments and wealth tax assessments. The Commissioner of Income Tax noted that as per the law laid down by the Supreme Court in N.V.NARENDRANATH's case, a single coparcener could constitute Hindu Undivided Family with his wife alone even in the absence of a son. The Commissioner of Income Tax also referred to the decision in reported in 157 ITR 819 (Andhra Pradesh) (A.VISWANATHA THEVAR v. COMMISSIONER OF WEALTH TAX) that the Hindu Undivided Family would continue in its status notwithstanding an allotment to a female member. It further held that there was no evidence that the agricultural properties in the name of the mother was purchased out of the joint family funds or was there evidence to accept that the asssee's mother gifted the same to the Hindu Undivided Family consisting of the assessee and his family. There was no evidence to show that the assessee treated the same as Hindu Undivided Family property.

6. As regards the house properties, the Commissioner of Income Tax (Appeals) viewed that the self occupied property and the let out properties were HUF properties and the income from the house properties received on partition was to be assessed in the status of HUF. Consequently, the Commissioner held that these properties were to be excluded from the hands of the assessee in his individual status. The Commissioner of Income Tax (Appeals) also modified the income estimated by the Assessing Officer from the Real Estate business and money lending business and directed the Assessing Officer to accept the returned income. Aggrieved of this, the Revenue went on appeal before the Income Tax Appellate Tribunal.

7. The Revenue contended before the Tribunal that the properties in question are not HUF properties and hence, liable to be assessed at the hands of the assessee. The Revenue also questioned the reduction ordered in respect of the real estate business and money lending business. The assessee also preferred cross appeals questioning the assessment in individual status.

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8. The bone of contention in all these appeals is only as regards the status of the assessee. The Tribunal referred to the decision of the Supreme Court reported in 97 ITR 493 (C.KRISHNA PRASAD v. CIT) which held that the property which a coparcener obtained on partition is an ancestral property as regards the male issue and as regards other relations, it is a separate property; that where coparcener dies leaving no male issues, it passes to other heirs by succession; that for a person with no other surviving coparcener, the same is his separate property, which he can deal with as he liked; that a son born thereafter could not challenge the same. The Tribunal noted that the assessee was the sole surviving coparcener as far as the house property under occupation as well as the other let out properties were concerned; as such, the assessee was entitled to deal with it as his own separate individual property. Hence, following the said decision, the Tribunal held that the the Assessing Officer was justified in considering the income from self-occupied property and let out property in the hands of the assessee individual. To that extent, the Tribunal set aside the order of the Commissioner of Income Tax (Appeals) and the assessment at the hands of the assessee was confirmed. On the question of business income of the assessee, the Tribunal held that the Revenue had not produced any material to go beyond the income disclosed by the assessee in its returns. As regards the appeal by the assessee, although the assessee did not appear in person or through counsel to argue the matter, the Tribunal held that there was no merit in the contention of the assessee, and hence, dismissed the appeal.

9. Aggrieved by this, the assessee has come on appeals before this Court challenging as to whether the Tribunal was justified in holding that the status of the assessee is an individual and hence the income from the property is to be assessed as an income of the individual and not that of the HUF. Learned counsel for the assessee submitted that the Tribunal erred in not following the decision reported in 148 ITR 440 (PREM CHAND v CIT), which fully supported the case of the assessee.

10. A perusal of the order of the authorities below show that one Peria Kani Konar, the paternal grandfather of the assessee, had two sons one Ramasamy Konar and Karuppa konar. Ramasamy Konar is the father of the assessee. There was a partition of the family properties among the two brothers, namely Ramasamy Konar and Karuppa Konar under document dated 12.10.1936. Ramasamy Konar had two wives, one Mayakkal and Ramakkal. Mayakkal is the mother of the assessee. The assessee had two brothers. Under document dated 10.6.1960, there was a partition under which the properties under one schedule was allotted to Mayakkal/assessee's mother and her three sons and the property mentioned in the other schedule was given to Ramakkal. There was a further partition among Mayakkal and

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the three sons which included the assessee. In the year 1983, the assessee effected the partition of the properties between his family members and himself. In the face of this division, the question arises as to whether the properties allotted on partition could be assessed as individual income.

11. Learned counsel for the assessee placed reliance on the decision reported in 116 ITR 623 (CIT Vs. GOPALDAS T.AGARWAL), 102 ITR 761 (AUTOWAYS (INDIA) Vs. CIT), 135 ITR 628 (CIT Vs. TALUKDAR), 60 ITR 293 (G.BUDDANNA Vs. I.T. COMMISSIONER, MYSORE), 74 ITR 190 (N.V.NARENDRANATH Vs. COMMISSIONER OF WEALTH TAX) and 148 ITR 440 (PREM CHAND Vs. CIT). He placed particular reliance on the decision of the Supreme Court reported in 74 ITR 190 (N.V.NARENDRANATH Vs. COMMISSIONER OF WEALTH TAX) and submitted that the facts were not different to reject the contention of the assessee that the properties in question have to be assessed in the status of HUF.

12. A perusal of the decision of the Apex Court reported in 74 ITR 190 (N.V.NARENDRANATH Vs. COMMISSIONER OF WEALTH TAX) shows that there was a partition among the members of the family and the subject matter of reference consisted of investments made from the compensation amount received under the Madras Estates Abolition Act, in securities, shares and other assets. The assessee claimed this as a HUF property, the HUF consisting of himself, his wife and two daughters and there was no male issue. On the question whether the assessee's claim as HUF could be accepted, the Apex Court held that to constitute a HUF, it is not necessary that there must be two male members to form a HUF as a taxable unit. On the question as to whether the assets which came to the share of the appellant on partition lost its character to be assessed as an individual property, the Supreme Court in the decision reported in 74 ITR 190 (N.V.NARENDRANATH v. COMMR. OF WEALTH TAX) pointed out that,

> "..... a distinction must be drawn between two classes of cases namely where an assessee is sought to be assessed in respect of the ancestral property held by him:
> (1) where property not originally joint is received by the assessee and question has to be asked whether it has acquired the character of a joint family property in the hands of the assessee and
> (2) where the property already impressed with the character of joint family property comes into the hands of the assessee as a single coparcener and the question required to be considered is whether it has retained the character of the joint family property in the hands of the assessee or is converted into absolute property of the assessee..... "

13. Referring to the decisions reported in Arunachalam

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Chettiar's case reported in [1958] 34 ITR (E.D.) 42, and Gowli Buddanna's case reported in [1966] 60 ITR 293, the Apex Court held that though in the absence of a male issue, the dividing coparcener may be properly described as the owner, yet, on adoption or a son born, the property which came into the hands of an individual as a sole surviving coparcener, would assume a different quality. The Apex Court further held that even where the partition was effected before the birth of a male child, it would continue to retain its character of the HUF property. Hence, the property received on partition by coparcener, having wife and daughters alone, still retains its character as HUF property of a family. In Gowli Buddanna's case reported in [1966] 60 ITR 293, the Supreme Court laid the principle that to constitute a Hindu Individual family, the presence of one individual male member is sufficient. The Apex Court held that the property obtained on partition is liable to be assessed as HUF property, it being impressed with the character of the joint family property, before coming into the hands of the coparcener. In the decision reported in 101 ITR 776 (SURJIT LAL CHHABDA v. CIT), the Supreme Court noted the difference in situation where the property was not improved with the character of joint family status, that it became the joint family property only when it was thrown into the common watch property. A perusal of the order herein shows that the assessee returned his income for these properties obtained in partition in the status of individual. The income declared was from house property, real estate and income from other sources.

14. A perusal of the order of the Tribunal shows that it relied on the decision of the Supreme Court reported in 97 ITR 493 (C.KRISHNA PRASAD v. CIT), wherein the Apex Court held that,

> " ..... A person who for the time being is the sole surviving coparcener is entitled to dispose of the coparcenary property as if it were his separate property. ..... In order to determine the status of the assessee for the purpose of Income Tax, we have to look to the relatives as they exist at present and it would not be correct to project into the matter future possibilities which might or might not materialise....."

15. The Tribunal found that the assessee was the sole surviving coparcener as far as the self occupied house property and let out properties were concerned and that in view of the decision quoted above, the Tribunal held that the properties are to be assessed as individual and not as HUF property. Considering the law declared on this subject, we do not accept the plea of the assessee that these properties shall be dealt with as HUF property.

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16. The assessee projected his dispute primarily with reference to the allotment of 3.36 acres of dry land that was allotted to the assessee in the family partition of 30.6.1966. This partition related to one among the assessee, his mother Mayakkal and his brothers. The division of properties among the above-said members was with reference to the property allotted to Mayakkal. Hence, by no means, it could be characterised as a joint family property.

17. Learned counsel for the appellant insisted that even the decision of the Supreme Court reported in 74 ITR 190 (N.V.NARENDRANATH Vs. COMMISSIONER OF WEALTH TAX) would apply to the facts herein. We do not agree with the contention of the learned counsel, particularly in the light of the categorical pronouncement of the Apex Court at page 197 of the decision reported in 74 ITR 190 (N.V.NARENDRANATH Vs. COMMISSIONER OF WEALTH TAX). The Apex Court, referring to Arunachalam Chettiar's case, held that where the property originally belonged to a joint family, "it continues to be ancestral property in his hands as regards his male issue for their rights had already attached upon it and the partition only cuts off the claims of the dividing coparceners. The same rule would apply even when a partition had been made before the birth of the male issue or before a son is adopted, for the share which is taken at a partition by one of the coparceners is taken by him as representing his branch. Again, the ownership of the dividing coparcener is such "that female members of the family may have a right to maintenance out of it and in circumstances to a charge for maintenance upon it. "

18. The facts in the case on hand clearly show that the assessee was allotted house properties at Thadagam Road, 5 cents site and 3.36 acres of dry agricultural land. The said property of 3.36 acres of land was in the name of the assessee's mother prior to the partition. Learned counsel for the assessee could not get over this fact to say that the said property carried with it the character of a HUF property. The authorities below rightly rejected the contention of the assessee that the property of the mother Mayakkal was allotted to the assessee along with the other joint family properties. Quite apart from this, even in the partition between the assessee, his wife and his minor son on 26.3.1983, which was given effect to retrospectively from 18.1.1978, there was no reference to this property as a joint family property. The appellate authority found that they were allotted to the assessee in the partition along with other properties not as a division of the family property but as the mother's property. There was no assessment on the assessee at any time even prior to the partition in 1983 in the status of HUF as regards this property. The authorities also pointed out that the properties obtained in the partition in 1966 were sold as early as 1971. In the circumstances,

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in the absence of any definite material to prove that the properties obtained on earlier partition in 1966 was a HUF property, it is not possible to accept the case of the assessee herein. A reference to the partition deed in 1993 also show that the dry land was retained by the assessee and only the other properties were the subject matter of division between himself, his minor son and the wife. While it cannot be denied that the HUF can continue even without a male member, yet, as far this property is concerned, there being no evidence to show that the property stood in the name of the family or it being impressed with the character of a family property, it is not possible to accept the case of the assessee. Hence, going by the facts of the case, we reject the contention of the assessee to hold that the status of the assessee was to be assessed as a HUF.

19. In the above circumstances, we confirm the order of the Tribunal that it was justified in holding the status of the assessee as an individual. Since the contention in all these appeals are one and the same, both under the Income Tax Act as well as the Wealth Tax Act, by this common order, we reject these appeals. There will, however, be no order as to costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

bg/ksv

To:

1.THE ASST. COMMISSIONER OF WEALTH TAX
SPECIAL INVETIGATION CIRCLE II, COIBATORE.

2. THE ASST.COMMISSIONER OF WEALTH
TAX SPECIAL INVESTIGATION CIRCLE III
COIMBATORE.

3. THE ASST. COMMISSIONER OF
INCOME TAX, SPECAIL INVESTIGATION
CIRCLE III, COIBATORE

4. THE COMMISSIONER OF
WEALTH TAX (APPEALS)
COIMBATORE.

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5. THE COMMISSIONER OF
INCOME TAX (APPEALS)
COIMBATORE.

6. THE DEPUTY COMMISSIONER OF
INCOME TAX APPEALS (I/C)
COIMBATORE.

7. THE ASST. REGISTRAR
INCOME TAX APPELLATE TRIBUNAL
BENCH 'C' RAJAJI BHAVAN, 3RD
FLOOR, BESANT NAGAR, MADRAS 90

+5ccs to Mr.N.Muralikumaran, Advocate Sr 10202,10203, 10204,10205 and 10206

+1cc to Mr.Subbarayaiyar, Advocate Sr 10725

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km/29.10.

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